

BEFORE THE
BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS, AND GEOLOGISTS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:)

DANIEL F. JAHNS)

P. O. Box 889)

Carpinteria, CA 93013)

Land Surveyor License No. L 4997,)

Respondent.)

Case No. 927-A

OAH No. 2010100769

ORDER DENYING PETITION FOR RECONSIDERATION

The Petition for Reconsideration filed by the respondent in the above-entitled matter has been read and considered by the Board for Professional Engineers, Land Surveyors, and Geologists. Good cause for the granting of the petition has not been shown; therefore, the Petition for Reconsideration is hereby denied.

The Decision issued by the Board for Professional Engineers, Land Surveyors, and Geologists shall become effective upon expiration of the Order Granting Stay of Execution of Decision on **November 14, 2011**.

IT IS SO ORDERED November 10, 2011.

Original Signed

BOARD FOR PROFESSIONAL ENGINEERS,
LAND SURVEYORS, AND GEOLOGISTS
Department of Consumer Affairs
State of California

BEFORE THE
BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS, AND GEOLOGISTS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

DANIEL F. JAHNS

P. O. Box 989

Carpinteria, CA 93013

Land Surveyor License No. L 4997,

Respondent.

No. 927-A

ORDER GRANTING STAY OF EXECUTION OF DECISION

A Decision Order in the above matter was issued by the Board for Professional Engineers, Land Surveyors, and Geologists on September 8, 2011, to become effective on October 14, 2011. Pursuant to the provisions of Government Code sections 11519 and 11521, a stay of execution of the decision in this matter is issued to allow the Board for Professional Engineers, Land Surveyors, and Geologists sufficient time to receive and consider a Petition for Reconsideration from the respondent.

Execution is stayed until **November 14, 2011.**

DATED: October 11, 2011.

Original Signed

NANCY A. EISSLER

Enforcement Program Manager

Board for Professional Engineers, Land Surveyors,
and Geologists

Department of Consumer Affairs

State of California

BEFORE THE
BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS, AND GEOLOGISTS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation against:

DANIEL F. JAHNS

P. O. Box 989

Carpinteria, CA 93013

Land Surveyor License No. L 4997,

Respondent.

Case No. 927-A

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board for Professional Engineers, Land Surveyors, and Geologists as its Decision in the above-entitled matter.

This Decision shall become effective on October 14, 2011.

IT IS SO ORDERED September 8, 2011.

Original Signed

BOARD FOR PROFESSIONAL ENGINEERS,
LAND SURVEYORS, AND GEOLOGISTS
Department of Consumer Affairs
State of California

BEFORE THE
BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

DANIEL F. JAHNS,
P.O. Box 989
Carpinteria, California 93013

Land Surveyor License No. L 4997

Respondent.

Case No. 927-A

OAH No. 2010100769

PROPOSED DECISION

This matter came regularly for hearing before Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, in Carpinteria, California, on June 6, 2011.

Thomas L. Rinaldi, Deputy Attorney General, represented Complainant David E. Brown, Executive Officer, Board for Professional Engineers and Land Surveyors (Board), Department of Consumer Affairs, State of California.

Daniel F. Jahns (Respondent) represented himself.

Complainant seeks to discipline Respondent's license because Respondent allegedly committed negligence and failed to file a record of survey in connection with his work on several parcels of land in the City of Santa Barbara, California. Respondent denied the allegations and asserted that cause for discipline does not exist.

Oral and documentary evidence was received at the hearing and the matter was submitted for decision. On June 17, 2011, Respondent submitted additional argument and sought to supplement the record with additional evidence. By order dated June 21, 2011, the submission was vacated, Respondent's post-hearing communication was disclosed as an ex parte communication, and Complainant was afforded the opportunity to respond to Respondent's additional argument and evidence by July 5, 2011. Respondent's submission has been marked as Exhibit I. On June 29, 2011, Complainant objected to the receipt or consideration of Respondent's submission.

Complainant's objection is sustained in part. In light of the facts that the parties were afforded the opportunity to present evidence and argument at the hearing, that the matter was initially submitted for decision on June 6, 2011, that the additional evidence and argument were unauthorized, and that Complainant objects to the additional evidence and argument, Respondent's request to submit additional evidence is denied. However, since there is no prejudice to Complainant in permitting Respondent to organize his arguments in written form to supplement his rather brief oral closing argument, his written argument, to the extent that it was based on evidence submitted at the hearing, has been considered.

The matter was submitted for decision on June 29, 2011.

FACTUAL FINDINGS

1. Complainant filed the Accusation solely in his official capacity.
2.
 - a. On April 3, 1981, the Board issued License number L 4997 to Respondent. The license has been in effect at all material times and expires on December 31, 2011, unless renewed.
 - b. The license was disciplined effective September 3, 2004, pursuant to a Stipulated Settlement and Disciplinary Order. Respondent agreed that the Board could establish a basis for some of the allegations in the then-pending accusation if the matter proceeded to hearing. It had been charged that Respondent had committed acts of negligence or incompetence, that he failed to provide land surveying services, and that he failed to use a written contract, in connection with a project in the City of Ventura. Respondent's license was revoked, and the revocation was stayed for one year on terms and conditions that included standard conditions, payment of \$2,500 as the Board's costs of investigation and prosecution, passage of the California Laws and Board Rules Examination, completion of an ethics course, and completion of 16 hours of continuing education. Respondent successfully completed his probation, and the license was fully restored effective September 3, 2005.
3. At various times during the period of 1999 through 2003, Respondent made American Land Title Association (ALTA) surveys of parcels of land, Assessor Parcel Numbers 037-082-026 and 037-082-027, abutting Chapala and De La Guerra streets in the City of Santa Barbara, Santa Barbara County, State of California. In performing his work, Respondent set at least seven markers, or "tags," in order to mark the positions from which he was taking his measurements. The tags are brass disks with his land surveyor's number, "LS 4997." In this case, Respondent also wrote the legend "Ref Point," of reference point. Six of Respondent's tags were placed at five feet offsets, as is commonly done in downtown Santa Barbara to designate property lines. Another tag was placed over an existing city monument, referred to as a "chiseled x." Respondent submitted field survey maps to the title insurance clients, Chadwick Pacific, L.P., Chadwick California, L.P., and Chicago Title Company.

4. The Board called Linda Richardson (Richardson) as an expert. She is a professional land surveyor who has performed many ALTA surveys, and who is familiar with the standards regarding preparation of such surveys. In her opinion, by setting his tags as he did, particularly in replacing the "chiseled x," Respondent created his own monuments, or physical markers of location, and set property lines based on his tags. In engaging in the foregoing actions, Richardson opined, Respondent created property lines and therefore materially impacted the nature of the existing monuments. In these circumstances, Richardson further opined, the standard of practice required Respondent to file a Record of Survey explaining and documenting his actions. Richardson's testimony is persuasive and establishes that Respondent's failure to file a Record of Survey constitutes a deviation from the standard of practice.

5. a. Richardson's opinion was indirectly corroborated by the actions of a subsequent surveyor, Daniel L. Berg, who found seven tags left by Respondent on the parcels and treated them as monuments pertinent to the setting of property lines. As evident from Berg's 2004 ALTA Final Survey Map and from the Record of Survey Berg filed with the Santa Barbara County Surveyor's Office on May 19, 2004, Berg was initially concerned that Respondent's tags established property lines. After not finding a written record of the tags and contacting Respondent, Berg used other monuments in preparing the ALTA survey.

b. Berg did report the monuments he found in his Record of Survey. With respect to the corner point on which the "chiseled x" had been, Berg wrote on the Record of Survey: "Corner established by proportion of city monument on Chapala Street per R3. FD. L&T 'LS 4997' No Record. . . ." The quoted statement, with the reference to respondent's tag, clearly indicates that Berg believed Respondent set the critical corner property boundary.

6. a. Respondent disagreed with Richardson's opinion, and denied making any material changes to any survey landmarks or monuments. He noted that he simply set his tags as points to gather data, and clearly marked them as reference or control points. The location of his control points was dictated by the configuration of the property and his ability to take accurate measurements. The points were not monuments or otherwise intended to represent property corners or property lines. The property lines were clearly ascertainable regardless of his placement of control points. Since he did not set any property lines, he asserted, he had no legal obligation to file a Record of Survey with the Surveyor's Office. Moreover, he noted, there are many unrecorded tags just like his in downtown Santa Barbara.

b. Respondent's testimony was not persuasive. Even if he did not intend to create property lines, his actions conveyed a different intent. He left his tags, including one over a pre-existing monument, the "chiseled x," which others could reasonably conclude constituted monuments that set property lines. His survey results, which relied on the tags he placed at the project site, were submitted to title insurance companies depicting property lines.

7. In July 2004, Berg brought the matter of Respondent's unrecorded monuments to the attention of the Michael B. Emmons (Emmons), Santa Barbara County Surveyor. Emmons confirmed that there was no Record of Survey, or any other document reflecting the purpose of the monuments, and wrote to Respondent inquiring about the matter. On October 18, 2004, Respondent replied to Emmons' inquiry, stating that he had set his tags as occupation points to gather data, and clearly marked them as "reference points." Respondent also stated that the points were not monuments or otherwise intended to represent property corners or properly lines. Emmons thereafter submitted the matter to the Board for its consideration.

8. On cross-examination, Emmons conceded that that it is not uncommon to find tags in downtown Santa Barbara like those left by Respondent without the required Record of Survey. Due to its limited resources, the Surveyor's Office's policy is to enforce the Record of Survey filing requirement only if complaints are filed.

9. Respondent planned to remove his tags from Assessor Parcel Numbers 037-082-026 and 037-082-027 upon the start of construction on the project. Construction was delayed for four years, and Respondent did not remove the tags as planned. He did remove them in 2004, after contact by Berg. In July 2010, Respondent filed a Record of Survey regarding his work on the parcels in question, which was recorded by Emmons's office in September 2010.

10. The Board has incurred \$1,950 in expert costs and \$2,840 in charges from the Attorney General's office, or a total of \$4,790 in costs of investigation and prosecution. These costs are found to be reasonable.

LEGAL CONCLUSIONS

1. Business and Professions Code¹ section 8780, subdivision (b), authorizes the Board to discipline the license of any land surveyor who has engaged in negligence or incompetence in the practice of land surveying.

2. Cause exists to discipline Respondent's license pursuant to section 8780, subdivision (b), in that he committed an act of negligence in failing to file a Record of Survey, by reason of factual finding numbers 3 through 6.

3. Section 8762, subdivision (b), provides, in pertinent part, "Notwithstanding subdivision (a), after making a field survey in conformity with the practice of land surveying, the licensed land surveyor or licensed civil engineer shall file with the county surveyor in the county in which the field survey was made a record of the survey relating to land boundaries or property lines, if the field survey discloses any of the following: [¶] . . . [¶] The establishment of one or more points or lines not shown on any subdivision map, official map, or record of

¹ All further references are to the Business and Professions Code.

survey, the positions of which are not ascertainable from an inspection of the subdivision map, official map, or record of survey. . . ." The record of survey must be filed "within 90 days after the setting of boundary monuments during the performance of a field survey or within 90 days after completion of a field survey, whichever occurs first. (Bus. & Prof. Code, § 8762, subd. (c).)

4. Exemptions to the filing of the record of survey requirement are found in section 8765, which, as pertinent to this matter, provides: "A record of survey is not required of any survey: [¶] . . . [¶] (d) When the survey is a retracement of lines shown on a subdivision map, official map, or a record of survey, where no material discrepancies with those records are found and sufficient monumentation is found to establish the precise location of property corners thereon, provided that a corner record is filed for any property corners which are set or reset or found to be of a different character than indicated by prior records. For purposes of this subdivision, a "material discrepancy" is limited to a material discrepancy in the position of points or lines, or in dimensions. . . ."

5. Cause exists to discipline Respondent's license pursuant to section 8762, subdivision (b), in that he failed to file a Record of Survey after establishing one or more points or lines not shown on any subdivision map, official map, or record of survey, the positions of which are not ascertainable from an inspection of the subdivision map, official map, or record of survey, by reason of factual finding numbers 3 through 6. Contrary to Respondent's assertions, the points he established presented material discrepancies with what was reflected in existing records, and the exemption found in section 8765, subdivision (d), is not applicable and cannot excuse his failure to file a Record of Survey with the County of Santa Barbara.

6. Cause exists pursuant to section 125.3 to order Respondent to pay the Board's costs of investigation and prosecution, in the sum of \$4,790, by reason of factual finding numbers 3 through 6, and 10, and legal conclusion numbers 1 through 5.

7. All evidence presented in mitigation and aggravation and in Respondent's defense has been considered. In light of the facts that Respondent engaged in conduct that is not uncommon in the area in which he works, that Respondent corrected his deficiencies, and that significant time has passed without another incident, it is unnecessary to revoke Respondent's license or to impose more than six months of probation. Because Respondent has suffered prior discipline, public reproval is insufficient. On balance, the order that follows is necessary and sufficient for the protection of the public.

ORDER

Land Surveyor License number L 4997 issued to Respondent Daniel Jahns is suspended for six months; provided, the suspension is stayed for a period of six months on the following terms and conditions:

1. Obey All Laws. Respondent shall obey all laws and regulations related to the practices of professional engineering and professional land surveying.
2. Submit Reports. Respondent shall submit such special reports as the Board may require.
3. Tolling of Probation. The period of probation shall be tolled during the time Respondent is practicing exclusively outside the state of California. If, during the period of probation, Respondent practices exclusively outside the state of California, Respondent shall immediately notify the Board in writing.
4. Violation of Probation. If Respondent violates the probationary conditions in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may vacate the stay and reinstate the disciplinary order which was stayed. If, during the period of probation, an accusation or petition to vacate stay is filed against Respondent, or if the matter has been submitted to the Office of the Attorney General for the filing of such, the Board shall have continuing jurisdiction until all matters are final, and the period of probation shall be extended until all matters are final.
5. Completion of Probation. Upon successful completion of all of the probationary conditions and the expiration of the period of probation, Respondent's license shall be unconditionally restored.
6. Cost Recovery. Respondent shall pay the Board the sum of \$4,790 in reimbursement of the Board's costs of investigation and enforcement, which payment shall be made during the period of probation on a schedule approved by the Board.

DATED: 7/25/14

Original Signed
SAMUEL D. REYES
Administrative Law Judge
Office of Administrative Hearings

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7
8 **BEFORE THE**
BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. ~~927~~A

11 **DANIEL F. JAHNS**
12 **P. O. Box 989**
13 **Carpinteria, CA 93013**
Land Surveyor License No. L 4997

A C C U S A T I O N

14 Respondent.

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16
17 Complainant alleges:

18 **PARTIES**

19 1. David E. Brown (Complainant) brings this Accusation solely in his official capacity
20 as the Executive Officer of the Board for Professional Engineers and Land Surveyors,
21 Department of Consumer Affairs.

22 2. On or about April 3, 1981, the Board for Professional Engineers and Land Surveyors
23 issued Land Surveyor License Number L 4997 to Daniel F. Jahns (Respondent). The Land
24 Surveyor License was in full force and effect at all times relevant to the charges brought herein
25 and will expire on December 31, 2011, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board for Professional Engineers and Land Surveyors (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 8762 of the Code states:

(a) Except as provided in subdivision (b), after making a field survey in conformity with the practice of land surveying, the licensed surveyor or licensed civil engineer may file with the county surveyor in the county in which the field survey was made, a record of the survey.

(b) Notwithstanding subdivision (a), after making a field survey in conformity with the practice of land surveying, the licensed land surveyor or licensed civil engineer shall file with the county surveyor in the county in which the field survey was made a record of the survey relating to land boundaries or property lines, if the field survey discloses any of the following:

(1) Material evidence or physical change, which in whole or in part does not appear on any subdivision map, official map, or record of survey previously recorded or properly filed in the office of the county recorder or county surveying department, or map or survey record maintained by the Bureau of Land Management of the United States.

(2) A material discrepancy with the information contained in any subdivision map, official map, or record of survey previously recorded or filed in the office of the county recorder or the county surveying department, or any map or survey record maintained by the Bureau of Land Management of the United States. For purposes of this subdivision, a "material discrepancy" is limited to a material discrepancy in the position of points or lines, or in dimensions.

(3) Evidence that, by reasonable analysis, might result in materially alternate positions of lines or points, shown on any subdivision map, official map, or record of survey previously recorded or filed in the office of the county recorder or the county surveying department, or any map or survey record maintained by the Bureau of Land Management of the United States.

(4) The establishment of one or more points or lines not shown on any subdivision map, official map, or record of survey, the positions of which are not ascertainable from an inspection of the subdivision map, official map, or record of survey.

1 (5) The points or lines set during the performance of a field survey of any parcel described
2 in any deed or other instrument of title recorded in the county recorder's office are not shown on
3 any subdivision map, official map, or record of survey.

4 (c) The record of survey required to be filed pursuant to this section shall be filed within 90
5 days after the setting of boundary monuments during the performance of a field survey or within
6 90 days after completion of a field survey, whichever occurs first.

7 (d)(1) If the 90-day time limit contained in subdivision (c) cannot be complied with for
8 reasons beyond the control of the licensed land surveyor or licensed civil engineer, the 90-day
9 time period shall be extended until the time at which the reasons for delay are eliminated. If the
10 licensed land surveyor or licensed civil engineer cannot comply with the 90-day time limit, he or
11 she shall, prior to the expiration of the 90-day time limit, provide the county surveyor with a letter
12 stating that he or she is unable to comply. The letter shall provide an estimate of the date for
13 completion of the record of survey, the reasons for the delay, and a general statement as to the
14 location of the survey, including the assessor's parcel number or numbers.

15 (2) The licensed land surveyor or licensed civil engineer shall not initially be required to
16 provide specific details of the survey. However, if other surveys at the same location are
17 performed by others which may affect or be affected by the survey, the licensed land surveyor or
18 licensed civil engineer shall then provide information requested by the county surveyor without
19 unreasonable delay.

20 (e) Any record of survey filed with the county surveyor shall, after being examined by him
21 or her, be filed with the county recorder.

22 (f) If the preparer of the record of survey provides a postage-paid, self-addressed envelope
23 or postcard with the filing of the record of survey, the county recorder shall return the postage-
24 paid, self-addressed envelope or postcard to the preparer of the record of survey with the filing
25 data within 10 days of final filing. For the purposes of this subdivision, "filing data" includes the
26 date, the book or volume, and the page at which the record of survey is filed with the county
27 recorder.

1 5. Section 8780 of the Code states:

2 "The board may receive and investigate complaints against licensed land surveyors and
3 registered civil engineers, and make findings thereon.

4 "By a majority vote, the board may reprove, suspend for a period not to exceed two years,
5 or revoke the license or certificate of any licensed land surveyor or registered civil engineer,
6 respectively, licensed under this chapter or registered under the provisions of Chapter 7
7 (commencing with Section 6700), whom it finds to be guilty of:

8 "(a) Any fraud, deceit, or misrepresentation in his or her practice of land surveying.

9 "(b) Any negligence or incompetence in his or her practice of land surveying.

10 "(c) Any fraud or deceit in obtaining his or her license.

11 "(d) Any violation of any provision of this chapter or of any other law relating to or
12 involving the practice of land surveying.

13 "(e) Any conviction of a crime substantially related to the qualifications, functions, and
14 duties of a land surveyor. The record of the conviction shall be conclusive evidence thereof.

15 "(f) Aiding or abetting any person in the violation of any provision of this chapter.

16 "(g) A breach or violation of a contract to provide land surveying services.

17 "(h) A violation in the course of the practice of land surveying of a rule or regulation of
18 unprofessional conduct adopted by the board."

19 6. Section 125.3 of the Code provides, in pertinent part, that the board may request the
20 administrative law judge to direct a licentiate found to have committed a violation or violations of
21 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
22 enforcement of the case.

23 FIRST CAUSE FOR DISCIPLINE

24 (Negligence)

25 7. Respondent is subject to disciplinary action under section 8780, subdivision (b) in
26 that in 2002-2003, with respect to ALTA surveys prepared by Respondent on several parcels of
27 land abutting Chapala and De La Gerra in Santa Barbara County, Respondent committed acts of
28 negligence as follows:

- a. Respondent failed to file a Corner Record or Record of Survey after setting his tags.
- b. Respondent failed to file a Record of Survey after removing his tags.

SECOND CAUSE FOR DISCIPLINE

(Failure to File Record of Survey)

8. Respondent is subject to disciplinary action under section 8762, subdivision (b) in that he failed to file a Record of Survey after establishing one or more points or lines not shown on any subdivision map, official map, or record of survey, the positions of which are not ascertainable from an inspection of the subdivision map, official map, or record of survey.

DISCIPLINE CONSIDERATIONS

9. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on or about September 4, 2004, in a prior disciplinary action entitled In the Matter of the Accusation Against Daniel F. Jahns before the Board for Professional Engineers and Land Surveyors, in Case Number L 4997. Respondent's license was revoked, the revocation stayed, and his license placed on probation for a period of one year for violations of Business and Professions Code section 8780, subdivisions (b), (d), and (g). That decision is now final and is incorporated by reference as if fully set forth.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board for Professional Engineers and Land Surveyors issue a decision:

1. Revoking or suspending Land Surveyor License Number L 4997, issued to Daniel F. Jahns.
2. Ordering Daniel F. Jahns to pay the Board for Professional Engineers and Land Surveyors the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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3. Taking such other and further action as deemed necessary and proper.

DATED: 4/22/00

Original Signed

DAVID E. BROWN
Executive Officer
Board for Professional Engineers and Land Surveyors
Department of Consumer Affairs
State of California
Complainant

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